

FEDERAL COMMUNICATIONS COMMISSION
445 12th STREET, S.W.
WASHINGTON, DC 20554

August 3, 2004

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In Reply Refer to:

1800B3-MFW

NAL/Acct No: MB20041810062

FRN: 0008865354

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Dr. Paul S. Warren
Maranatha Broadcasting, Inc.
P.O. Box 7575
Charleston, WV 25777

In re: **DWXAF(FM), Charleston, WV**
Facility ID No. 39869
Maranatha Broadcasting, Inc.

File No. BRED-20031205ABM

Dear Mr. Warren:

This letter refers to: (1) Maranatha Broadcasting, Inc.'s ("Maranatha") untimely application for renewal of license for station WXAF(FM), Charleston, West Virginia. For the reasons set forth below, we issue a NOTICE OF APPARENT LIABILITY FOR A FORFEITURE to Maranatha for its failure to timely file a license renewal application and for unauthorized operation, and we grant Maranatha's license renewal application.

Background/Violations. An application for renewal of WXAF(FM)'s license should have been filed by June 1, 2003. No such application was filed, and the station's license expired on October 1, 2003.¹ Accordingly, on December 3, 2003, the staff wrote to Maranatha, indicating that the station's license had expired and that: (1) all authority to operate the station was terminated; and (2) station's call letters were deleted from the Commission's data base. Maranatha was advised that any operation of the station was then unauthorized and must cease immediately.² Upon receipt of the letter, Maranatha ceased operation of WXAF(FM) and tendered the subject license renewal application and, on December 12, 2003, tendered a request for special temporary authorization ("STA") to continue operating the translator station pending action on the license renewal

¹ See 47 C.F.R. §§ 73.1020, 73.3539(a).

² Letter to Maranatha Broadcasting, Inc., Ref. 1800B3-DW (Chief, Audio Division, Media Bureau, Dec. 3, 2003).

application. The staff granted the STA request on February 25, 2004.³ Maranatha provides no explanation for its failure to file a timely renewal application.

The guidelines contained in the Commission's *Forfeiture Policy Statement*⁴ specify a base forfeiture amount of \$3,000 for a failure to file a required form. The guidelines also specify a base forfeiture amount of \$10,000 for construction and/or operation without an instrument of authorization for the service. Section 503(b)(2)(D) of the Act requires the Commission to consider "the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require." In this case, Maranatha failed to timely file the WXAF(FM) renewal application and continued station operations for over two months before filing the appropriate application and seeking STA to continue operations. On the other hand, Maranatha had previously been licensed to operate Station WXAF(FM), so this transgression is not comparable to "pirate" wireless operations, which typically have been subject to forfeitures of approximately \$10,000.⁵ Taking into consideration these facts and all of the factors required by Section 503(b)(2)(D) of the Act and the Forfeiture Policy Statement, we will impose the full \$3000 forfeiture for the failure to timely file the renewal application but reduce the forfeiture to \$3,000 for the unauthorized operation.⁶

License renewal application/petition for reconsideration. In evaluating an application for license renewal, the Commission's decision is governed by Section 309(k) of the Communications Act. That section provides that if, upon consideration of the application and pleadings, we find that (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Communications Act or the Commission's Rules; and (3) there have been no other violations which, taken together, constitute a pattern of abuse, we are to grant the renewal application.⁷ If, however, the licensee fails to meet that standard, the Commission may deny the application – after notice and opportunity for a hearing under Section 309(e) of the Act – or grant the application “on terms and conditions that are appropriate, including a renewal for a term less than the maximum otherwise permitted.”⁸

We find that neither of Maranatha's established violations constitute a “serious violation” of the Commission's rules warranting designation for evidentiary hearing. Moreover, we find that these violations, when considered together, do not evidence a pattern of abuse.⁹ Further, we find

³ *Letter to Mr. Paul S. Warren, President*, (Asst. Chief, Audio Division, Media Bureau, Feb. 25, 2004).

⁴ *Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087, 17115 (“*Forfeiture Policy Statement*”).

⁵ *Joe L. Ford d/b/a Ford Communications*, 15 FCC Rcd 23721, 23722 (E.B. 2000), *citing Jean R. Jonassaint*, 15 FCC Rcd 10422 (E.B. 2000).

⁶ *See, e.g., Discussion Radio Incorporated*, 19 FCC Rcd 7433, 7438 (2004).

⁷ 47 U.S.C. § 309(k)(1). The renewal standard was amended to read as described by Section 204(a) of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996). *See Order, Implementation of Sections 204(a) and 204(c) of the Telecommunications Act of 1996 (Broadcast License Renewal Procedures)*, 11 FCC Rcd 6363 (1996).

⁸ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

⁹ For example, we do not find here that the licensee's station operation "was conducted in an exceedingly careless, inept

that station WXAF(FM) served the public interest, convenience, and necessity during the subject license term. We will therefore grant Maranatha's license renewal application below.¹⁰

Conclusion/Actions. For the reasons set forth above, and pursuant to Section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. Section 503(b), and Sections 0.283 and 1.80 of the Commission's Rules,¹¹ Maranatha Broadcasting Company, Inc. is hereby advised of its apparent liability for a forfeiture of \$6,000 for willfully and repeatedly violating Section 73.3539 of the Commission's rules and Section 301 of the Communications Act of 1934, as amended.¹²

Accordingly, IT IS ORDERED, pursuant to Section 1.80 of the Commission's rules, that within thirty days of the release of this Notice, Maranatha SHALL PAY to the United States the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

Payment of the forfeiture may be made by credit card through the Commission's Revenue and Receivables Operations Group at 418-1995 or by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment MUST INCLUDE the FCC Registration Number ("FRN") (0008865354) and should note the NAL/Acct. No. (MB20041810062) referenced in the caption of this document.

The response, if any, must be mailed to Peter H. Doyle, Chief, Audio Division, Media Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 2-A360, Washington, D.C. 20554 and MUST INCLUDE the FRN (0008865354) and NAL/Account number (MB20041810062) referenced in the caption of this document.

The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

and negligent manner and that the licensee is either incapable of correcting or unwilling to correct the operating deficiencies." *See Heart of the Black Hills Stations*, 32 F.C.C.2d 196, 198 (1971). Nor do we find on the record here that "the number, nature and extent" of the violations indicate that "the licensee cannot be relied upon to operate WJJS-FM in the future in accordance with the requirements of its licenses and the Commission's Rules." *Heart of the Black Hills Stations*, 32 F.C.C.2d at 200. *See also Center for Study and Application of Black Economic Development*, 6 FCC Rcd 4622 (1991), *Calvary Educational Broadcasting Network, Inc.*, 7 FCC Rcd 4037 (1992).

¹⁰ *See* 47 U.S.C. § 309(k).

¹¹ 47 C.F.R. §§ 0.283 and 1.80.

¹² 47 C.F.R. §73.3539; 47 U.S.C. § 301.

Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.¹³

IT IS FURTHER ORDERED, that call sign WXAF IS REINSTATED and the application (File No. BRFT-20031205ABM) of Maranatha Broadcasting, Inc. for renewal of license for station WXAF(FM), Charleston, West Virginia, IS GRANTED.

Sincerely,

Peter H. Doyle, Chief
Audio Division
Media Bureau

¹³ See 47 C.F.R. § 1.1914.